

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-6981

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ARMSTEAD GRAVETTE, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Chief District Judge. (CR-90-102-A, CA-91-711-AM)

Submitted: October 24, 2003

Decided: November 17, 2003

Before WIDENER, KING, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Armstead Gravette, Jr., Appellant Pro Se. Paul Joseph McNulty, United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Armstead Gravette seeks to appeal the district court's order accepting the report and recommendation of a magistrate judge and denying relief on his petition styled as a motion under Fed. R. Civ. P. 60(b), but properly construed by the district court as a motion under 28 U.S.C. § 2255 (2000). See United States v. Emmanuel, 288 F.3d 644, 649 (4th Cir. 2002) (noting that a district court may construe a pleading as a § 2255 motion sua sponte when doing so will not deprive the movant of his right to file a timely, non-successive § 2255 motion). The order is appealable only if a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, ___, 123 S. Ct. 1029, 1039 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Gravette has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately

presented in the materials before the court and argument would not aid the decisional process.

DISMISSED